

Notice of Allowability

Application No.

10/772,016

Examiner

Brian P Mruk

Applicant(s)

NIEMIEC ET AL.

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to November 26, 2004.
2. ☒ The allowed claim(s) is/are 29-32.
3. ☒ The drawings filed on 04 February 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau. (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 3/8/04 & 3/17/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Brian P. Mruk
Brian P. Mruk
Primary Examiner
Tech Center 1700

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. The application has been amended as follows:

IN THE SPECIFICATION:

On page 1, line 2, after 2002, insert --, allowed,--

IN THE CLAIMS:

Cancel claims 33-47 and 53-62

3. The examiner notes that claims 33-47 and 53-62 were nonelected without traverse in Applicant's Response dated November 26, 2004. Therefore, in accordance with *MPEP* 821.02, the examiner has canceled claims 33-47 and 53-62.

4. The following is an examiner's statement of reasons for allowance:

Lukenbach et al, WO 97/26860, discloses a conditioning shampoo composition comprising a surfactant portion and a conditioner portion (See abstract and page 1, lines 26-34). It is further taught by Lukenbach et al that a preferred conditioner portion

Art Unit: 1751

contains a cationic guar derivative, such as guar hydroxypropyltrimonium chloride, and a homopolymer or copolymer of diallyldimethylammonium chloride (see page 14, lines 1-2 and 28-34), and that the composition may also contain a volatile silicone, such as siloxanes (see page 16, line 33-page 17, line 5). However, patentee differs from applicant in that Lukenbach et al does not teach or suggest in general a composition that contains silicone quaternium-13 or cetyl triethylmonium dimethicone copolyol phthalate, as required by applicant in the instant claims.

Accordingly, the claims viewed as a whole would not have been obvious to one of ordinary skill in the art at the time of the invention after viewing the prior art of record.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Application/Control Number: 10/772,016

Page 4

Art Unit: 1751

BPM

Brian Mruk

January 8, 2005

Brian P. Mruk

Brian P. Mruk
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